

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO.1248 OF 1983

WITH

SPECIAL CIVIL APPLICATION NO.1509 OF 1983

For Approval and Signature

The Hon'ble Mr. Justice S.K. KESHOTE

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1. Whether reporters of local papers may be allowed to see the judgment ?
  2. To be referred to the reporters or not ?
  3. Whether their lordships wish to see the fair copy of the judgment ?
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950, or any order made thereunder ?
  5. Whether it is to be circulated to the Civil Judge?

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MAGANLAL J. PANDYA & ORS.

VERSUS

STATE OF GUJARAT & ORS.

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Appearance:

In SCA No.1248 of 1983

MR DH WAGHELA for petitioners

MR MG DOSHIT for respondent No.2

None present for other respondents

In SCA No.1509 of 1983

None present for petitioners  
MR MG DOSHIT for respondent No.2  
None present for other respondents

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Coram: S.K. Keshote,J  
Date of decision:11.7.97

C.A.V. JUDGMENT

#. Both these Special Civil Applications have arisen in the same facts and grounds and as such are being taken up for hearing together and further are being disposed of by this common order. In Special Civil Application No.1509 of 1983, nobody has put appearance on behalf of petitioners. However, Shri D.H.Waghela, counsel for petitioners in Special Civil Application No.1248 of 1983 has advanced arguments in detail.

#. The facts of the case, in brief, are that the petitioners have undergone a licentiate course of three years in Ayurvedic medicine from Bhavnagar Medical School which was an institution recognized by the Ex-Saurashtra State. The Ex-Saurashtra State had framed Saurashtra Civil Services Classification and Recruitment Rules, 1956. Under these Rules, a provision was there for appointment to the post of Ayurvedic Vaidyas. The Ayurvedic Vaidyas under the aforesaid Rules were divided into two categories, qualified and unqualified. The qualified Vaidyas were further sub-divided, under the aforesaid Rules, into two categories, i.e. senior scale and junior scale. The petitioners have come up with the case in Special Civil Application that being holding the qualification of licentiate course of Ayurvedic medicine from Bhavnagar Medical school, they were eligible to be appointed as qualified Vaidyas under the aforesaid Rules. The petitioners were appointed as Vaidyas on 28th August 1951, 20th July 1951, and 18th April 1951 respectively. On the merger of Ex-Saurashtra State in the bigger bilingual State of Bombay, the petitioners were allocated as Vaidyas to the bigger bilingual State of Bombay. On formation of State of Gujarat, the petitioners were allocated as Vaidyas to this State. On introduction of Panchayat Raj, the petitioners were allocated to the services of Rajkot, Bhavnagar, Jamnagar and Amreli District Panchayats. The persons similarly situated like the petitioners who have undergone licentiate course of

Bhavnagar Medical School were also appointed on the post of Vaidyas alongwith them. They were also ultimately allocated to the Panchayat services like the petitioners. These persons were allocated to Rajkot and Amreli District Panchayats. These Vaidyas were treated as qualified Vaidyas and were placed in the grade of qualified Vaidyas by Rajkot and Amreli District Panchayats and they were assigned the grade of Rs.500-900 under the Desai Pay Commission recommendations. The petitioners submitted that the aforesaid grade was recommended for qualified Vaidyas by Desai Pay Commission. One of them Shri D.V. Patel, has already been promoted as Medical Officer in Class II cadre. The petitioners have come up with the case that the four persons named, the details of which has been given in annexure 'E', have been given the grade prescribed for qualified Vaidyas and some of these persons have retired and their pension has also been fixed treating them to be qualified Vaidyas and reference in this respect has been made to the case of Shri Jagannath M. Upadhyay. The petitioners made an application to the Gujarat Board of Ayurvedic and Unani System of Medicines, for being registered in Para I of the Register maintained under the Gujarat Medical Practitioners' Act. This application of petitioners came to be rejected under the order dated 17th September 1981. A copy of this order has been submitted by petitioners as annexure 'G'. The petitioners have also made a reference to some of the similarly situated persons like them who were given grade of qualified Vaidyas pursuant to recommendation of Sarela Pay Commission vide Government order dated 5th October 1970. Grievance has been made by the petitioners that the State of Gujarat under its Circular dated 8th July 1982, stated that the persons like the petitioners who have not been registered in Part I of the Second Schedule of the Indian Medicine Central Council Act, 1970, are to be considered as unqualified Vaidyas. The petitioners made a representation against the said Government Circular. Challenge has been made by the petitioners in this Special Civil Application to the order annexure 'G', refusing to register the petitioners in Para I of the Register maintained under the Gujarat Medical Practitioners' Act and the Circular, annexure 'I', under which they have been treated as unqualified Vaidyas.

#. The learned counsel for the petitioners contended that as the licentiate course of Bhavnagar Medical School was the requisite qualification needed by the Ex-Saurashtra State, and as the petitioners have been recruited in the Ex-Saurashtra State, they should have been treated to be qualified Vaidyas. It has next been

contended that a hostile discrimination has been made by respondents as several other Vaidyas who were absorbed in the Rajkot and Amreli District Panchayats and who were treated as qualified Vaidyas for the purpose of pay scale etc. were possessing same qualifications possessed by the petitioners. Next contention has been raised that the State of Gujarat is under statutory duty cast upon it under Section 29 of the Gujarat Medical Practitioners' Act, to amend the Schedule of recognized qualifications and to include degree, diploma or certificate not already entered in the Schedule if it appears to the State Government that the course of study or examination prescribed by the institution conferring degree, diploma or certificate not entered in the Schedule are such as to secure the possession by its recipient of the requisite knowledge and skill for the efficient practice of Ayurvedic and Unani System of medicines. Carrying further this contention, the learned counsel for the petitioners submitted that all the petitioners are treated qualified to practice under the Gujarat Medical Practitioners' Act and as such, they should have been treated to be qualified for all the purposes including pay. Lastly, the learned counsel for the petitioners contended that Section 25 of the Gujarat Medical Practitioners' Act comes to their rescue as their names are registered in the Register maintained under the Act, and as such, they should have been treated as qualified Vaidyas for the purpose of giving them pay scale prescribed for that category.

#. On the other hand, the learned counsel for respondent No.2, Shri M.G.Doshit, contended that the petitioners have no case whatsoever in their favour. They do not possess the qualification as entered in the Schedule to the Gujarat Medical Practitioners' Act, and as such, they could not have been treated and rightly they have not been treated as qualified Vaidyas for the purpose of pay scale prescribed for qualified Vaidyas. It has next been contended that these persons were not qualified but still taking into consideration the fact that they have longer experience and professing the practice since long in the bilingual State and then in this State, their names have been entered in para II of the Register maintained by Registered practitioners. So though under the Act aforesaid they are entitled to practice, but for the purpose of entitlement of the pay scale prescribed for qualified Vaidyas they cannot be treated as qualified Vaidyas. The Vaidyas whose names have been entered in Part I of the Register maintained under the aforesaid Act are qualified to receive the pay scale prescribed for qualified Vaidyas. The State Government has not made any

discrimination. Replying to the contention raised by learned counsel for the petitioners, of discrimination, Shri M.G.Doshit contended that even under the Ex-Saurashtra State, the petitioners were not treated as qualified Vaidyas. In reply to the contention of learned counsel for petitioners with reference to the provisions of Sections 25 & 29 of the Gujarat Medical Practitioners' Act, Shri M.G.Doshit contended that the matter has been examined by the Government, but the licentiate certificate which the petitioners obtained from Bhavnagar Medical School was not entered in the Schedule. It has further been contended by learned counsel for respondent No.2 that in such matters which qualifications are to be taken to be sufficient for being entered in the Schedule are not subject to judicial review of this Court. These are the matters to be decided by experts and when this matter has been decided by experts, no interference should be made by this Court. Section 25 of the Act has given very limited protection to the petitioners and merely because they have been treated to be registered practitioners to profess Ayurvedic system, they cannot be treated as qualified Vaidyas for the purpose of giving them the pay scale prescribed for qualified Vaidyas.

#. I have given my thoughtful considerations to the submissions made by the learned counsel for the parties.

#. The petitioners were appointed in the year 1951, i.e. in the erstwhile State of Saurashtra. In the year 1956, the Ex-Saurashtra State framed Rules known as Saurashtra Civil Services Classification and Recruitment Rules, 1956. These Rules provided two categories of Vaidyas, qualified and unqualified and further division has been made in the category of qualified Vaidyas, i.e. senior scale and junior scale. The petitioners have come up with that they were eligible to be appointed as qualified Vaidyas under the Rules aforesaid, but it is not the case of the petitioners that after coming into force of the aforesaid Rules, they have been treated as qualified Vaidyas and were given pay scale prescribed for qualified Vaidyas in the Ex-Saurashtra State. From the facts stated by the petitioners in Special Civil Application, it is undisputed that there were three pay scales of Vaidyas, i.e. unqualified Vaidya, qualified Vaidya junior scale, and qualified Vaidya - senior scale. The petitioners were not treated as qualified Vaidyas and they have not been given the pay scale prescribed for qualified Vaidyas in the Ex-Saurashtra State and naturally on formation of bilingual State of Bombay, they were continued in the pay scale of unqualified Vaidyas. Reference has been made by the petitioners to the cases

of other Vaidyas, but the very basic distinction has not been drawn by the petitioners. The petitioners have stated that they have been allocated to the services of Rajkot, Bhavnagar, Jamnagar, and Amreli District Panchayats and the other Vaidyas have also been allocated to the services of the above District and were treated as qualified Vaidyas. So it is a case where some of the petitioners and other persons have been allocated to the District Panchayat of Rajkot, Amreli etc. i.e. in the one and the same District Panchayat, but those Vaidyas were given the pay scale of qualified Vaidyas and not the petitioners or those petitioners who were allocated to these District Panchayats. It is not the case of the petitioners that those persons were also in the same pay scale as the petitioners were in the Ex-Saurashtra State. In case these petitioners would have been treated as qualified Vaidyas in the Ex-Saurashtra State, then naturally they would have been given the higher pay scale on their allocation to the State of Bombay or then to Gujarat and finally to the District Panchayats, and naturally they would have been treated as qualified Vaidyas and the pay scale prescribed for qualified Vaidyas would have been given to them. A plea of discrimination has been raised but necessary factual foundation has not been provided. The burden was on the petitioners to prove the case of discrimination by providing necessary factual foundation. The petitioners have to establish to the satisfaction of this Court that the petitioners and those persons were similarly situated, which fact they are unable to establish, what to say to the satisfaction of the Court. It is not the case, as stated earlier, that those persons were also treated to be unqualified Vaidyas like the petitioners, under the Rules 1956. The petitioners have also not given under which pay scales those persons have been appointed initially. The Ex-Saurashtra State, as stated earlier, laid down three pay scales for Vaidyas, and the petitioners were placed in the pay scale of unqualified Vaidyas. Since 1956, the petitioners have not made any grievance. They have not raised any voice at any point of time that they should have been treated as qualified Vaidyas as they are eligible for appointment as qualified Vaidyas. The petitioners have also not made any grievance after the recommendations of Sarela Pay Commission and Desai Pay Commission were given effect to by the Government. The Guj. Medical Practitioners' Act also clearly made a demarcation of Vaidyas and that grievance has also not been made by the petitioners till they made an application to the Gujarat Board of Ayurvedic and Unani System and Medicines for entering their names in Part I of the Register. The petitioners

have very conveniently avoided to give the date of this application, but this application was made only on 24th August 1981, as it comes out from the document annexure 'G', the order of the Government dated 17th September 1981, under which the said application came to be rejected. So from 1956 to 24th August 1981, the petitioners have not raised any grievance whatsoever regarding their claim of pay scale of qualified Vaidyas. Not only this, the Guj. Medical Practitioners' Act has only entered certain qualifications as the qualifications prescribed for qualified Vaidyas but to protect the persons who were already in the profession for years together, and who were not having these qualifications as entered in the Schedule I of the Register, their names have been entered in the Part II of the Practitioners' Register. So, a right has been given to the petitioners under the Act to practice and as the petitioners were already in long service, they were continued in service, but as unqualified Vaidyas. It is true that for all the purposes, the petitioners are Vaidyas under the Act, but that fact will not give them any right for getting the pay scale prescribed for qualified Vaidyas. It is settled law now that on the basis of qualifications, the State can prescribe two different pay scales for a post. Reference in this respect may have to the decision of Hon'ble Supreme Court in the case of Shyambabu Verma v. Union of India, reported in 1994(2) SCC 521. The petitioners were treated, for all these years, as unqualified Vaidyas. Even in the Ex-Saurashtra State, there were three categories of Vaidyas and one of them was of unqualified Vaidyas, under which the petitioners were serving. So this distinction is made under the State Act and it is a recognized distinction since 1956. The petitioners, in case would have been qualified Vaidyas, as stated earlier, they would have raised this claim but till 1981 they have not raised the same. Now only because the qualified Vaidyas have been given higher pay scale, they could not base their claim for the same on the principle of "equal pay for equal work". During the course of argument, the petitioners' counsel has tried to give out that both the Vaidyas, qualified and unqualified are discharging the same duties and functions, but as stated earlier, on the basis of qualifications in the same cadre or category or post, two different pay scales could have been prescribed and rightly have been prescribed by the Government for the posts of Vaidyas. Though under Section 29 of the Guj. Medical Practitioners' Act, the State Government is empowered to consider the cadre and qualifications in the Schedule to the Act, but that has been considered in the present case and the qualifications which were possessed

by the petitioners were not entered in the Schedule to the Act. I fail to see any illegality in the order of the respondents, annexure 'G'. It is for the respondents to decide whether the qualifications possessed by the petitioners should be entered in the schedule or not. Similarly, the contention of the learned counsel for the petitioners with reference to Section 25 of the Act is equally devoid of any substance. Treating these persons for practice in medicines is one thing and to consider their entitlement for pay scale prescribed for qualified Vaidyas under the Rules framed under Article 309 of the Constitution of India, is a different thing. These two things have to be taken in two different context and merely because the petitioners were treated to be registered practitioners, they cannot ipso-facto be treated as qualified Vaidyas for the purpose of getting the pay scale prescribed for qualified Vaidyas. The claim of the petitioners made in Special Civil Application is wholly untenable. None of the legal and fundamental rights of the petitioners are being infringed. None of the contentions raised by the learned counsel for the petitioners deserves acceptance.

#. In the result, both these Special Civil Applications fail and the same are dismissed. Rule discharged. No order as to costs.

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